

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2686**

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**Introduced by Assembly Member Tom Berryhill**  
(Coauthor: Senator Denham)

February 19, 2010

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~~An act to amend Section 306 of the Food and Agricultural Code, relating to the Department of Food and Agriculture, and making an appropriation therefor. An act to amend Section 46017 of the Food and Agricultural Code, relating to organic products.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2686, as amended, Tom Berryhill. ~~Department of Food and Agriculture: refunds. Organic products: county agricultural commissioners: civil penalties.~~

*Existing law authorizes the Secretary of Food and Agriculture or a county agricultural commissioner to levy a civil penalty, as provided, against a person who violates the California Organic Products Act of 2003, or any regulation adopted pursuant to that act, or regulations adopted by the National Organic Program. Existing law provides that a civil penalty levied by a county agricultural commissioner may be recovered in a civil action brought in the name of the county.*

*This bill would authorize a county agricultural commissioner, or his or her representative, after the exhaustion of review procedures, to file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any order that denies a petition for a writ of administrative mandamus with the clerk of the superior court of any county, and require the clerk to immediately enter judgment in conformity with the decision or order. The bill would*

*provide that no fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment.*

~~Existing law provides that the Secretary of Food and Agriculture may authorize the refund of any money that is received by the Department of Food and Agriculture in the payment of any fee, assessment, or tax. Existing law also provides that if the secretary finds that the amount of any refund is less than \$10, as specified, the secretary may retain the amount for use for the same purpose for which the original payment was made, unless demand for the payment of a refund is made within 6 months after the determination that a refund is due, in which case, the refund shall be paid.~~

~~This bill would provide that the secretary may retain the refund for use for the same purpose for which the original payment was made, as specified, if he or she finds that the amount of the refund is less than \$25. Because some of the retained refunds would be deposited into continuously appropriated special funds, this bill would make an appropriation. The bill would also make other technical and clarifying changes.~~

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 46017 of the Food and Agricultural Code*
- 2     *is amended to read:*
- 3     46017. (a) In lieu of prosecution, the secretary or a county
- 4     agricultural commissioner may levy a civil penalty against any
- 5     person under the enforcement jurisdiction of the secretary as
- 6     provided in Section 46000 who violates this act, or any regulation
- 7     adopted pursuant thereto or pursuant to this chapter, or regulations
- 8     adopted by the NOP, in an amount not more than five thousand
- 9     dollars (\$5,000) for each violation. The amount of the penalty
- 10    assessed for each violation shall be based upon the nature of the
- 11    violation, the seriousness of the effect of the violation upon
- 12    effectuation of the purposes and provisions of this chapter and the
- 13    impact of the penalty on the violator, including the deterrent effect
- 14    on future violations.
- 15    (b) Notwithstanding the penalties prescribed in subdivision (a),
- 16    if the secretary or county agricultural commissioner finds that a

1 violation was not intentional, the secretary or county agricultural  
2 commissioner may levy a civil penalty of not more than two  
3 thousand five hundred dollars (\$2,500) for each violation.

4 (c) For a first offense, in lieu of a civil penalty as prescribed in  
5 subdivision (a) or (b), the secretary or county agricultural  
6 commissioner may issue a notice of violation if he or she finds  
7 that the violation is minor.

8 (d) A person against whom a civil penalty is proposed shall be  
9 afforded an opportunity for a hearing before the secretary or county  
10 agricultural commissioner, upon request made in writing within  
11 30 days after the issuance of the notice of penalty. At the hearing,  
12 the person shall be given the right to review the secretary's or  
13 commissioner's evidence of the violation and the right to present  
14 evidence on his or her own behalf. If no hearing is requested, the  
15 civil penalty shall constitute a final and nonreviewable order.

16 (e) If a hearing is held, review of the final decision of the  
17 secretary or county agricultural commissioner may be requested  
18 in writing by any person, pursuant to Section 1094.5 of the Code  
19 of Civil Procedure within 30 days of the date of the final order of  
20 the secretary or county agricultural commissioner.

21 (f) A civil penalty levied by the secretary pursuant to this section  
22 may be recovered in a civil action brought in the name of the state.  
23 A civil penalty levied by a county agricultural commissioner  
24 pursuant to this section may be recovered in a civil action brought  
25 in the name of the county. *After the exhaustion of the review*  
26 *procedures provided in this section, a county agricultural*  
27 *commissioner, or his or her representative, may file a certified*  
28 *copy of a final decision of the commissioner that directs the*  
29 *payment of a civil penalty and, if applicable, a copy of any order*  
30 *that denies a petition for a writ of administrative mandamus with*  
31 *the clerk of the superior court of any county. Judgment shall be*  
32 *entered immediately by the clerk in conformity with the decision*  
33 *or order. No fees shall be charged by the clerk of the superior*  
34 *court for the performance of any official service required in*  
35 *connection with the entry of judgment pursuant to this section.*

36 (g) The secretary shall maintain in a central location, and make  
37 publicly available for inspection and copying upon request, a list  
38 of all civil penalties levied by the secretary and by each county  
39 agricultural commissioner within the past five years, including the  
40 amount of each penalty, the person against whom the penalty was

1 levied, and the nature of the violation. Copies of this list shall also  
2 be available by mail, upon written request and payment of a  
3 reasonable fee, as set by the secretary.

4 ~~SECTION 1. Section 306 of the Food and Agricultural Code~~  
5 ~~is amended to read:~~

6 ~~306. If the secretary finds that the amount of any refund is less~~  
7 ~~than twenty-five dollars (\$25), the secretary may retain the amount~~  
8 ~~for use for the same purpose for which the original payment was~~  
9 ~~made, unless demand for the payment of a refund is made within~~  
10 ~~six months after the determination that a refund is due. If a demand~~  
11 ~~is made, the refund shall be paid.~~